

ESTTA Tracking number: **ESTTA277753**

Filing date: **04/13/2009**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91185393
Party	Plaintiff Hewlett-Packard Development Company, L.P.
Correspondence Address	Jeffrey E. Faucette Howard, Rice, Nemerovski, Canady, Falk & Rabkin 3 Embarcadero Center, 7th Floor San Francisco, CA 94111 UNITED STATES trademark@howardrice.com, jfaucette@howardrice.com
Submission	Other Motions/Papers
Filer's Name	Jeffrey E. Faucette
Filer's e-mail	trademark@howardrice.com
Signature	/JEF_dch/
Date	04/13/2009
Attachments	Supp Decl for HPDC MSJ.pdf ( 4 pages )(350767 bytes )

1 I hereby certify that this correspondence is being deposited electronically with the Trademark Trial and Appeal  
2 Board on the date shown below.

3   
Jeffrey E. Faucette

Dated: April 13, 2009

4  
5 JEFFREY E. FAUCETTE (Cal. Bar No. 193066)  
6 ROBERT D. HALLMAN (Cal. Bar No. 239949)  
7 HOWARD RICE NEMEROVSKI CANADY  
FALK & RABKIN

8 A Professional Corporation  
9 Three Embarcadero Center, 7th Floor  
San Francisco, California 94111-4024  
Telephone: 415/434-1600  
Facsimile: 415/217-5910

10 Attorneys for Opposer  
11 HEWLETT-PACKARD DEVELOPMENT  
COMPANY, L.P.

12  
13 IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
14 TRADEMARK TRIAL AND APPEAL BOARD

15  
16 HEWLETT-PACKARD DEVELOPMENT  
COMPANY, L.P.,

17 Opposer,

18 v.

19 VUDU, INC.,

20 Applicant.

Opposition No. 91185393

Serial No. 77/112,745

Filed: February 21, 2007

Published: March 25, 2008

Mark: **VUDU**

21 Supplemental Declaration Of Jeffrey E.  
22 Faucette In Support Of Opposer Hewlett-  
Packard Development Company, L.P.'s  
23 Motion For Summary Judgment

1 I, Jeffrey E. Faucette, declare as follows:

2 1. I am an attorney at Howard, Rice, Nemerovski, Canady, Falk & Rabkin, A  
3 Professional Corporation, counsel of record for Opposer Hewlett-Packard Development  
4 Company, L.P. ("HP"). I make this supplemental declaration in support of HP's Motion for  
5 Summary Judgment. Except where otherwise indicated, this declaration is based upon my  
6 own personal knowledge, and I could and would testify competently to the truth of the  
7 matters stated herein if called upon to do so.

8 2. On or about April 3, 2009, I had an Internet search performed on the search  
9 engine hosted at <http://google.com>. The search terms "vudu religion" yielded 92,600  
10 website results in the [google.com](http://google.com) search database.

11 3. On or about April 3, 2009, I investigated the personal computers offered for sale  
12 at the consumer electronics retailer Best Buy, by having an Internet search performed on the  
13 Best Buy website at <http://www.bestbuy.com>. The search indicated that Best Buy offers  
14 well over one hundred different personal computers for sale. Among the computers offered  
15 for sale is HP's Firebird desktop computer which, as of April 3, 2009, could be purchased  
16 through Best Buy for \$1299.99.

17 4. When HP's motion for summary judgment and concurrent motion to suspend  
18 proceedings were filed, we contacted Vudu, Inc.'s attorneys and informed them of our  
19 understanding that, pursuant to 37 C.F.R. §2.127(d), proceedings were suspended and  
20 mutual discovery obligations were stayed pending the outcome of motion for summary  
21 judgment. By phone, we asked Vudu, Inc.'s attorneys if they were in agreement on that  
22 point, and by email we sent the text of the statute and asked that they contact us if they  
23 disagreed that mutual discovery obligations had been put on hold by the motion for summary  
24 judgment. We received no response from Vudu, Inc., but the fact that Vudu, Inc. sent no  
25 interrogatory responses the week thereafter (when the responses were due absent a  
26 suspension of proceedings) convinced me that Vudu, Inc. was in agreement that discovery  
27 was on hold. I was surprised, therefore, to see Vudu, Inc. accuse HP of a "dubious  
28 unwillingness to participate in the discovery process" in its opposition brief. Opposition to

1 Opposer's Motion for Summary Judgment at 1. I was also surprised by Vudu, Inc.'s  
2 assertion that it has responded to HP's discovery requests. *Id.* To date, Vudu, Inc. has not  
3 served responses to HP's interrogatories, and it has not produced a single document  
4 responsive to HP's requests for the production of documents. The only discovery response  
5 HP has received thus far is a series of objections to HP's requests for the production of  
6 documents, along with an indication that Vudu, Inc. would provide responsive documents to  
7 certain of HP's requests at an undisclosed future date.

8 I declare under penalty of perjury under the laws of the United States of America that  
9 the foregoing is true and correct to the best of my knowledge. Executed this 13th day of  
10 April 2009, at San Francisco, California.

11  
12   
13


14 JEFFREY E. FAUCETTE  
15

16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
  
HOWARD  
RICE  
NEMEROVSKI  
CANADY  
FALK  
& RABKIN  
A Professional Corporation

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8

On April 13, 2009, I served the following document(s) described as **SUPPLEMENTAL DECLARATION OF JEFFREY E. FAUCETTE IN SUPPORT OF OPPOSER'S MOTION FOR SUMMARY JUDGMENT** on the persons listed below by personally delivering the document(s) listed above to the person(s) at the address(es) set forth below.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed at San Francisco, California on April 13, 2009.

  
Georgie M. Price